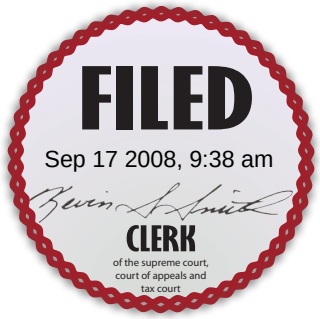

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IN THE
COURT OF APPEALS OF INDIANA

RYAN SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0804-CR-187
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0603-FB-35

September 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Ryan Smith appeals his conviction and sentence for Aiding Robbery, as a Class B felony. We affirm.

Issues

Smith raises the following two issues on appeal:

I. Whether the evidence was sufficient to find Smith guilty beyond a reasonable doubt; and

II. Whether his sentence is inappropriate.

Procedural History

On February 27, 2006, a man took Jodi Garrett's purse and a second man drove the car in which they fled. The State charged Smith with Aiding Robbery, as a Class B felony. After a jury trial, the trial court entered judgment of conviction and sentenced Smith to the advisory term of ten years, with four years suspended.

Smith now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

Smith argues that the evidence was not sufficient to find him guilty beyond a reasonable doubt of Aiding Robbery. Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative

value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id.

A person who, while armed with a deadly weapon, knowingly takes property from another person by using force, threatening to use force or by putting a person in fear commits Robbery, as a Class B felony. Ind. Code § 35-42-5-1 (West 2004). A person who knowingly aids another person to commit an offense commits that offense, regardless of whether the other person is charged, convicted or acquitted. Ind. Code § 35-41-2-4 (West 2004).

The following reflects the facts most favorable to the verdict. Garrett had been a Marine for three years. Her primary responsibility was repairing handguns. At the time of this incident, she worked at a hotel in Allen County, Indiana.

Garrett exited the back door of the hotel where she worked to retrieve something from her car. She was carrying her purse which contained her military identification and a Kohl's gift card. As she walked, she noticed an African-American male ("driver") sitting in a four-door, white Contour and another African-American male ("second man") walking around the Contour. While she was in her car, the second man approached her vehicle. She noticed that a nine-millimeter handgun was tucked in his waistband. He grabbed her purse and ran toward the Contour. By this time, the driver had moved the Contour into "a get-away position." Transcript at 182. Garrett pursued the second man and grabbed the sleeve of his jacket. The second man wrestled with her and hit her head with the handgun. He ran to the passenger's side of the Contour and she ran to the driver's side of the Contour. Garrett was within inches of the driver's side window, pounding on the window and screaming that she

knew the license plate number and that there was no money in the purse. Garrett and the driver looked directly at each other before the two men drove away.

After Garrett called 9-1-1 with the license plate number, Ft. Wayne Police Officer Todd Battershell ("Officer Battershell") drove to the address listed for the Contour's registered owner, saw the Contour with the identified license plate number, and saw Smith and another man. Officer Battershell and another officer drew their weapons and ordered the men to the ground. Smith delayed in complying and dropped some objects that he had been holding. As Officer Battershell stood with his foot on Smith's back, Smith placed a card under a landscaping timber. Upon investigating, police found a Kohl's gift card under a landscaping timber and Garrett's military identification on the passenger seat of the Contour. On the night of the incident and at trial, Garrett identified Smith as the driver.

On appeal, Smith directs our attention to his testimony that he did not know that he was driving the second man "to and/or away from a robbery." Appellant's Brief at 14. Apparently, the jury chose not to believe his assertion in light of Garrett's testimony that she pounded on Smith's window and screamed for her purse. There was sufficient evidence for the jury to find beyond a reasonable doubt that Smith committed Aiding Robbery.

II. Sentencing

The trial court imposed a ten-year term of imprisonment, with six years executed and four years suspended. For a Class B felony, the advisory sentence is ten years and the minimum term is six years. Ind. Code § 35-50-2-5 (West Supp. 2008). The minimum term must be executed for Robbery committed with a deadly weapon. Ind. Code § 35-50-2-

2(b)(4)(I) (West Supp. 2008). Therefore, as Smith acknowledges on appeal, the statute required his sentence to include at least six years executed. His appellate argument is effectively limited to the imposition of four suspended years in addition to the minimum executed term.

First, Smith challenges the trial court's finding of mitigating circumstances. A court may impose any sentence that is:

> (1) authorized by statute; and
>
> (2) permissible under the Constitution of the State of Indiana;
>
> regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

Ind. Code § 35-38-1-7.1(d) (West Supp. 2008). "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Id. (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). When imposing sentence for a felony, the trial court must enter "a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence." Id. at 491. Its reasons must be supported by the record and must not be improper as a matter of law. Id. Furthermore, it is an abuse of discretion for a trial court to omit from its sentencing statement "reasons that are clearly supported by the record and advanced for consideration." Id. at 490-91.

The trial court found Smith's conduct during his arrest, including his attempt to hide an item taken from Garrett, to be an aggravating circumstance. The trial court found one of five offered mitigating circumstances to be significant – his lack of a criminal history. Smith argues that the trial court abused its discretion in not finding the other four offered mitigating circumstances to be significant. However, one of them, that imprisonment would impose a hardship as he was about to graduate from college, was nonsensical in light of his recognition that Indiana Code Section 35-50-2-2 required him to execute at least a six-year term of imprisonment. As to the other three, being a college student, helping people in his neighborhood, and expressing great remorse, the record does not suggest that the trial court abused its discretion in omitting to find these as significant. To the contrary, the trial court remarked that "[d]isingenuous doesn't begin to describe your behavior Mr. Smith." Sentencing Transcript at 12. Accordingly, we conclude that the trial court did not abuse its discretion in sentencing Smith.

Finally, Smith argues that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, the advisory sentence "is the starting point the

Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. A man took Garrett's purse and hit her on the head with a handgun. Smith drove the man to the back of a hotel, stayed with him at least briefly, and moved the car into position for a quick exit while the man robbed Garrett. Despite Garrett's loud pleas for her purse, Smith drove away. Meanwhile, regarding Smith's character, he tried to hide an item taken from Garrett even while in police custody.

Based upon our review of the case and our consideration of the trial court's decision, we conclude that Smith's sentence is not inappropriate.

Conclusion

There was sufficient evidence to find Smith guilty of Aiding Robbery. His advisory sentence is not inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.